TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 281.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

JOSEPH VANACKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 8, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 281.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, on Monday, the first day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY,
Clerk.

JOSEPH VANACKER
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the thirty-first day of October, 1884, came the plaintiff, by his attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons, and a bond for costs in said above-entitled cause, which said præcipe and bond are respectively in words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

U. S. circuit court, n. dist. of Ill., December term, A. D. 1884.

JOSEPH VANACKER
vs.
JESSE SPALDING, COLLECTOR, &C. } Assumpsit. Damages $500.00.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case upon promises, to the damage of said plaintiff in the sum of five hundred dollars, and direct the same to the marshal of said district to execute, and make it returnable to the December term of said court, A. D. 1884.

PERCY L. SHUMAN,
Plaintiff's Attorney.

To WM. H. BRADLEY, Esq., *Clerk.*

CHICAGO, *Oct.* 31, 1884.

(Endorsed:) Filed Oct. 31, 1884. Wm. H. Bradley, clerk.
23305

3 *Bond for costs.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, A. D. 1884.

JOSEPH VANACKER
vs.
JESSE SPAULDING, COLLECTOR, &C. } In assumpsit.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against any of my property for any costs taxed against the said plaintiff.

Dated this 30th day of October, A. D. 1884.

PERCY L. SHUMAN.

(Endorsed:) Filed Oct. 31, A. D. 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the 31st day of October, 1884, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

4 CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector, &c., if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December next, to answer unto Joseph Vanacker of a plea of trespass on the case upon promises, to his damage, as it is alleged, of five hundred dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 31st day of October, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 109th year.

[SEAL.] WM. H. BRADLEY,
Clerk.

Marshal's return.

I have served the within writ by reading the same to and in the presence and hearing of the within-named Jesse Spalding, this 31st day of October, 1884.

A. M. JONES,
U. S. Marshal,
5 R. D. SHERMAN,
D'p't.

(Endorsed:) Filed Nov. 29, A. D. 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-fifth day of November, 1884, came the plaintiff, by his attorneys, and filed in said clerk's office his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois, to the December term, 1884.

Joseph Vanacker, plaintiff in this suit (which is a suit arising under the revenue laws of the United States and is brought to recover duties claimed by the plaintiff to have been illegally exacted of him, and by him paid under protest), by Shuman & Defrees, his attorneys, complain of Jesse Spalding, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises.

For that whereas the said plaintiff heretofore, to wit, on the eighteenth day of June, in the year of our Lord one thousand eight hundred
6 and eighty-four, at, to wit, the northern district of Illinois, made payment to the said defendant, collector as aforesaid, of a certain large sum of money, to wit, the sum of one hundred and seven dollars and twenty cents, lawful money of the United States, as duties, under protest, and in order to obtain possession of certain india-rubber balloons, merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs he, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein, distinctly and specifically, the ground of his, the said plaintiff's, objection thereto, and that within thirty days after

the date of the said ascertainment and liquidation as aforesaid, the plaintiff appealed to the Secretary of the Treasury of the United States.

7 And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of one hundred and seven dollars and twenty cents, lawful money as aforesaid, so illegally demanded of and under protest paid by the said plaintiff as aforesaid, and, being so liable, the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year and at the place last aforesaid, became and was indebted to the said plaintiff in the further sum of five hundred dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so indebted the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto

8 the said plaintiff the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiff in the sum of five hundred dollars, and therefor' the said plaintiff brings his suit, &c.

SHUMAN & DEFREES,
Plaintiff' Attorneys.

(Endorsed:) Filed Nov. 25, 1884. Wm. H. Bradley, clerk.

9 Afterwards, to wit, on the fifteenth day of December, 1884, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, December term, 1884.

JESSE SPALDING, COLLECTOR, &c.,
ats.
JOSEPH VANACKER. } Assumpsit, No. 19309.

And the said Jesse Spalding, defendant, by Richard S. Tuthill (United States attorney for this district), his attorney, comes and defends, etc., when,

etc., and says that he did not undertake or promise, in manner and form, as the said plaintiff has above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

RICHARD S. TUTHILL,
U. S. Attorney, for Defendant.

(Endorsed:) Filed 15 Dec., 1884. Wm. H. Bradley, clerk.

10 Afterwards, to wit, on the ninth day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JOSEPH VANACKER
vs.
JESSE SPALDING, COLLECTOR, &C. } Assumpsit.

Now come the plaintiff, by his attorney, and the defendant, by the district attorney, and upon issue joined herein, by agreement they waive the intervention of a jury and for trial put themselves upon the court, and after hearing the evidence the court takes this cause under advisement.

11 Afterwards, to wit, on the first day of June, 1885, there was filed in said clerk's office the special finding of the court in said entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

In the circuit court of the United States, northern district of Illinois.

VANACKER
vs.
SPALDING, COL'R, &C.

The court finds from the proof the facts in the case to be as follows: That the goods in question were small india-rubber bags or pouches intended for inflation with gas in order to make a small balloon to be used as a child's plaything.

The goods are not toys in the form in which they are imported.

The pouches were complete, and nothing is done to make the balloon except to inflate and secure the same.

The goods were entered and claimed as articles composed of "india-rubber not specially enumerated or provided for, dutiable at 25 % ad valorem." They were classified by the appraiser as toys, and duty assessed thereon at 35 % ad valorem.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed June 1, 1885. Wm. H. Bradley, clerk.

12 On the same day, to wit, the first day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

JOSEPH VANACKER
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS of the port and district of Chicago. } Assumpsit.

Now come the parties, by their attorneys, and the court having considered and being now fully advised upon the matters heretofore submitted, herein finds the issue for the plaintiff, and assesses his damages at one hundred and seven dollars and twenty cents, with interest and costs.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of one hundred and seven dollars and twenty cents, his damages, with interest thereon from the time the same was paid to the defendant, together with his costs in in this behalf expended, amounting to twenty-three dollars and forty-six cents, and that he have execution therefor.

13 Afterwards, to wit, on the fifteenth day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JOSEPH VANACKER
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS for the port and district of Chicago. } Assumpsit.

Now comes the said defendant, by the district attorney, and on his motion it is certified by the court that there was probable cause for the acts done by said defendant as complained of herein.

14 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Joseph Vanacker is the plaintiff, and Jesse Spalding, collector of customs for the port and district of Chicago, is the defendant, as the same appears from the files and records of said court, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this thirteenth day of March, 1886.

[SEAL.]

WM. H. BRADLEY,
Clerk.

15 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Joseph Vanacker, plaintiff (gen. number 19309), and Jesse Spalding, collector of customs, &c., defendent, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Jesse Spalding, collector of customs, &c., defendant, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 21st day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 110th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the U. S. Circuit Court, Nor. Dist. of Illinois.

(Indorsed:) Supreme Court of the United States. Jesse Spalding, collector of customs, &c., plaintiff in error, vs. Joseph Vanacker, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

16 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

To Joseph Vanacker, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 18 , pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Jesse Spalding is plaintiff in error, to show cause, if any there be, why the errors mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. H. W. Blodgett, dist. judge, presiding in circuit court,

this 18th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

H. W. BLODGETT,
Dist. Judge.

I hereby accept service of the within citation.

P. L. SHUMAN,
Plaintiff's Attorney.

CHICAGO, *March* 22, 1886.

(Indorsed:) Supreme Court of the United States. Jesse Spalding vs. Joseph Vanacker. Citation to October term, A. D. 18 .

(Indorsement on cover:) No. 281. Jesse Spalding, collector of customs for the port and district of Chicago, plaintiff in error, vs. Joseph Vanacker. N. Illinois, C. C. U. S. Filed June 8, 1886.

Office Supreme Court U. S.
FILED
APR 16 1889
JAMES H. McKENNEY
Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE SPALDING, COLLECTOR OF customs for the port and district of Chicago, plaintiff in error, vs. JOSEPH VANACKER. } No. 280.

JESSE SPALDING, COLLECTOR OF customs for the port and district of Chicago, plaintiff in error, vs. JOSEPH VANACKER. } No. 281.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE SPALDING, COLLECTOR OF customs for the port and district of Chicago, plaintiff in error, vs. JOSEPH VANACKER. } No. 280.

JESSE SPALDING, COLLECTOR OF customs for the port and district of Chicago, plaintiff in error, vs. JOSEPH VANACKER. } No. 281.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

These two cases are between the same parties, and present the same questions on substantially the same findings of facts.

The plaintiff below imported at Chicago india-rubber es, complete as toys in all respects, except that they were not inflated with air or gas. They were classified as toys by the appraiser, and duty assessed thereon at 35 per centum ad valorem. The importer claims they should have been assessed as "articles composed of india-rubber, not specially enumerated or provided for, at 25 per centum ad valorem." He brought these suits to recover the difference. The parties waived the intervention of a jury. The court found the facts specially, and entered judgment on the findings in favor of the plaintiff.

SPECIAL FINDING.

(*In case No.* 280.)

"The court finds, from the proof, the facts in this case to be as follows: That the goods in question were small India-rubber bags or pouches intended for inflation with gas, in order to make a small balloon to be used as a child's plaything.

"The goods are not toys in the form in which they are imported.

"The pouches were complete, and nothing is done to make the balloon, except to inflate and secure the same.

"The goods were entered and claimed as articles composed of India rubber, not specially enumerated or provided for, dutiable at 25 per cent. ad valorem; they were classified by the appraiser as toys, and duty assessed thereon at 35 per cent. ad valorem." (Rec., pp. 7 and 8.)

The finding in case No. 281 is substantially the same. (Rec., p. 5.)

JUDGMENT.

(*In case No.* 280.)

"Now come the parties, by their attorneys, and the court having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the plaintiff and assesses his damages at one hundred and twenty-three dollars and forty cents, with interest thereon from the time the same was paid to the defendant, and costs.

"It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of one hundred and twenty-three dollars and forty cents, his damages, with interest thereon from the time the same was paid to the defendant, together with his costs in this behalf, amounting to twenty-four dollars and ninety-six cents, and that he have execution therefor."

The judgment in No. 281 is the same in form. (Rec., p. 6.)

SPECIFICATION OF ERROR.

The court erred in entering judgment on the facts found in favor of the plaintiff in this, that the imports were toys, and were rightly classified and assessed at 35 per cent. ad valorem, whereas the court ruled on the facts found that they should have been classified and assessed at 25 per cent. ad valorem.

BRIEF OF ARGUMENT.

The collector assessed the imports under the following clause of schedule N, tariff of 1883 (22 U. S. Stats., 512):

Dolls and toys, thirty-five per centum ad valorem.

The plaintiff claims they should have been assessed under the following clause of the same schedule (22 U. S. Stats., 513):

> Articles composed of India rubber not specially enumerated or provided for in this act, twenty-five per centum ad valorem.

The special finding shows "that the goods in question are small india rubber bags or pouches, intended for inflation with gas, in order to make a small balloon, to be used as a child's plaything."

A "child's plaything" is a toy. The court evidently held that a plaything, if not at the time of importation in condition for immediate use, was not a toy. If the large balloon of the aeronaut is finished and complete in all its appointments, but is not inflated, it is still a balloon. If any one were to ask by what name such an apparatus was known, he would answer, "It is a balloon." If a small balloon is equally complete, but not inflated, the answer should be the same. A small balloon intended to be used as a plaything is a toy.

Under the facts found, this import was a small balloon. In the wholesale trade such toys are seldom, if ever, inflated, but generally bought and sold in the form these goods were, as finished articles. In the retail trade by small merchants, only a very few at a time are kept inflated. The peddlers who carry their packs never keep them inflated while transporting them from place to place, and seldom, if ever, over night. They are frequently inflated only with heated air, and become incapable of flying as soon as the air cools to the temperature of the surrounding atmosphere. They can not be, for commercial

purposes, "toys" when they fly, and "unenumerated India rubber" when they do not.

The classification of the article depends upon the article itself and not upon the condition in which it may be found. If one of these pouches be partly filled with cold air, it will lie prostrate on the floor or ground. It would be as useless as a balloon in that condition as though not inflated at all, but after being heated it will fly. It can hardly be said to be less a toy when it is not heated than when it is. It is a toy in both conditions. A top will not spin without a string, but a top imported without a string is a toy. Wagons are often, for convenience of transportation, taken apart, and in that condition can not be used as wagons, but for commercial purposes they are wagons. If a steam-engine does not have steam applied, it will perform none of the functions of an engine; but when applied it is efficient, but it is an engine whether the steam be applied or not.

The special findings on which the judgments were entered fail to show that the duty was paid; that protest was filed or appeal taken to the Secretary of the Treasury, all of which are conditions precedent to the right to sustain these actions.

G. A. JENKS,
Solicitor-General.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1858

No. 280.

JESSE SPALDING, Collector of Customs for the [illegible] and District of Chicago, Plaintiff in Error,

vs.

JOSEPH VANALLER.

SAME vs. SAME.—No. 281.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR DEFENDANT IN ERROR.

PERCY L. SHUMAN,
For Defendant in Error.

[illegible] & Depuyster, Printers.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 280.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

JOSEPH VANACKER.

SAME *vs.* SAME.—No. 281.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR DEFENDANT IN ERROR.

BRIEF OF ARGUMENT.

On or about May 23, 1883, the defendant in error imported, at Chicago, a quantity of rubber bags or pouches, which he entered as "articles composed of India rubber, not specially enumerated or provided for," under clause 454 of Schedule "N" of the act of March 3, 1883 (Heyl's Tariff), dutiable at 25 per centum ad valorem.

The plaintiff in error classified the goods as "toys," under clause 425 of Schedule "N," act of March 3, 1883, and assessed a duty thereon of 35 per centum ad valorem. The defendant in error paid the duty assessed by the collector in order to obtain possession of the goods, and duly protested and appealed against the collector's action. The appeal was decided by the Secretary of the Treasury, and within ninety days thereafter the defendant in error instituted suit to recover the excess of duties paid, claiming one hundred and twenty-three dollars and forty cents, with interest from the date of payment.

A trial was had before Blodgett, J., without a jury, a jury having been duly waived, and the court rendered judgment in favor of the plaintiff (Record, pages 7 and 8) for the full amount claimed.

There is a special finding of certain facts which is conclusive as to both parties. It is briefly as follows:

"That the goods in question were small India-rubber bags or pouches intended for inflation with gas in order to make a small balloon, to be used as a child's plaything. *The goods are not toys in the form in which they are imported.*" (Rec., p. 8.)

Upon the issues as made up by the pleadings and the facts as thus found the judgment was rendered in favor of the plaintiff (defendant in error).

It is quite manifest that the court was convinced by the proofs that the goods were "articles of India rubber not specially provided for." The claim of the collector was that they were specially provided for as "toys," and this contention is disposed of by the finding that they were *not* "toys."

Such being the facts in the case, there was nothing left for the court to do except to render judgment in favor of the plaintiff.

In reply to the point made by the Solicitor General, that these articles are as clearly toys before as after having been inflated with gas, we refer to a decision rendered by the Secretary of the Treasury, under date of August 30, 1888, which involves the principle of this case and is in accord with the ruling of the circuit court.

(9000.)

Smokers' Articles—Certain India-rubber Parts of Tobacco-Pouches not Dutiable as.

TREASURY DEPARTMENT, *August* 30, 1888.

SIR: The Department is in receipt of your letter of the 22d instant, transmitting the appeal (8223*s*) of Messrs. Wm. Demuth & Co. from your assessment of duty at the rate of 70 per cent. ad valorem on certain so-called manufactures of rubber imported by them, per "La Bourgogne," May 20, 1888, and returned by the appraiser at your port as smokers' articles, dutiable under the provisions of T. I., 476.

From the special report of the appraiser submitted with your letter and an inspection of the samples accompanying the same, it appears that the merchandise in question consists of India-rubber pouches in the form of rats, skulls, &c., similar to those covered by the Department's decision of August 26, 1885 (Synopsis 7084), with the exception that they are not lined. This exception, in the opinion of the Department, constitutes a sufficient difference to take the articles out of the classification found applicable by the decision cited.

The lining is, in the opinion of the Department, necessary to make the articles serviceable as pouches for tobacco.

Without the lining they are simply materials for use in the construction of the completed pouches. They are not, in the present condition, smokers' articles, but are articles of India rubber, and should be classified as such, at the rate claimed by the appellants, under T. I., 454.

You are directed to reliquidate the entry accordingly, and to take the necessary steps for refunding the excessive duty exacted.

Respectfully yours, I. H. MAYNARD,
Assistant Secretary.

COLLECTOR OF CUSTOMS, *New York.*

(Synopsis of Dec. 1888, p. 362.)

Where there is a general finding and a special finding of certain facts the general finding will not be controlled by the special finding, unless the facts found specially are such as will not warrant the general finding. In this case the general finding of the issue for the plaintiff covers all of the facts in issue and will not be disturbed by the special finding, for the reason that *all* of the facts are not specially found. The issue made by the pleadings was whether the plaintiff paid the duties, protested, and appealed, had the appeal decided, and brought suit within the time provided by law. The general finding covers all of these points, and the facts specially found are not inconsistent with the general finding.

PERCY L. SHUMAN,
For Defendant in Error.

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1865.

No. 252.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

S. YANADA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 3, 1865.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 282.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

S. YANADA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, on Monday the first day of June in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-five and of our Independence the one hundred and ninth year.

WM. H. BRADLEY, *Clerk.*

S. YANADA
v.
JESSE SPALDING, COLLECTOR OF CUSTOMS OF the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-fourth day of May, 1884, came the plaintiff, by his attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago in said district, his præcipe and bond for costs in said entitled cause, which said præcipe and bond are respectively in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

U. S. circuit court, north. dist. of Ills. July term, A. D. 1884.

S. YANADA
v.
JESSE SPALDING, COLLECTOR OF CUSTOMS OF the port and district of Chicago. } Assumpsit. Damages $1,000.

The clerk of said court will issue a summons in the above entitled cause to said defendant in a plea of trespass on the case upon promises to the damage of said plaintiff in the sum of one thousand dollars, and direct the same to the marshal of said district to execute and make it returnable to the July term of said court, A. D. 1884.

PERCY L. SHUMAN,
Plaintiff's Attorney.

To WILLIAM H. BRADLEY, Esq.,
Clerk.

CHICAGO, *May* 24, 1884.

(Endorsed:) Filed May 24, 1884. W. H. Bradley, cl'k.
23306

3 *Bond.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, July term, A. D. 1884.

YANADA
v.
SPALDING, COLLECTOR, &C. } In assumpsit. $1,000.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against plaintiff.

Dated this 24th day of May, A. D. 1884.

PERCY L. SHUMAN.

(Endorsed:) Filed May 24th, A. D. 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the twenty-fourth day of May, 1884, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

4 The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of July next, to answer unto S. Yanada of a plea of trespass on the case upon promises to his damage, as it is alleged, of one thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 24th day of May, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 108th year.

[SEAL.] W. H. BRADLEY, *Clerk.*

Marshal's return.

I have served the within writ, by reading the same to and within the presence and hearing of Jesse Spalding collector of customs, Chicago, Ill., therein named, on the 24 day of May, 1884.

A. M. JONES,
U. S. Marshal.
5 By S. C. HAYES,
Deputy.

(Endorsed:) Filed May 29th, A. D. 1884. W. H. Bradley, clerk.

Afterwards, to wit, on the fifth day of June, 1884, came the plaintiff, by his attorney, and filed in said clerk's office his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

In the United States circuit court for the northern district of Illinois, to the July term, 1884.

S. Yanada, plaintiff in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiff to have been illegally exacted of him and by him paid under protest), by Percy L. Shuman, his attorney, complain of Jesse Spalding, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises.

For that, whereas, the said plaintiff heretofore, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and eighty-four, at, to wit, the northern district of Illinois, made payment to
6 the said defendant, collector, as aforesaid, of a certain large sum of money, to wit, the sum of three hundred and seventy-five dollars and twenty cents, lawful money of the United States, as duties under protest, and in order to obtain possession of certain merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified so paid to the said defendant, as aforesaid, as duties, as aforesaid; was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant, collector, illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid, by the proper officers of the customs, he, the said plaintiff, being dissatisfied with the decisions of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein distinctly and specifically the ground of his, the said plaintiff's, objections thereto, and that within thirty days after the date of the said ascertainment and liquidation as afore-

said, the plaintiff appealed to the Secretary of the Treasury of the United States.

7 And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeals, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeals.

By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of three hundred and seventy-five dollars and twenty cents, lawful money as aforesaid, so illegally demanded of, and under protest paid by, the said plaintiff as aforesaid; and being so liable the said defendant, afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year, and at the place last aforesaid, became and was indebted to the said plaintiff in the further sum of one thousand dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so indebted the said defendant afterwards, to wit, on the day and year and at the

8 district last aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiff in the sum of one thousand dollars, and therefor the said plaintiff brings this suit, &c.

P. L. SHUMAN,
Plaintiff's Attorney.

(Endorsed:) Filed June 5, 1884. W. H. Bradley, cl'k.

Afterwards, to wit, on the seventh day of July, 1884, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois. July term, 1884.

9 JESSE SPALDING, COLLECTOR, &c.
ats. } Assumpsit.
S. YANADA.

And the said Jesse Spalding, defendant, by Richard S. Tuthill (United States attorney for this district), his attorney, comes and defends, etc.,

when, etc., and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

RICHARD S. TUTHILL,
U. S. Attorney for Defendant.

(Endorsed:) Filed 7 July, 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the sixth day of March in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

S. YANADA
vs.
JESSE SPALDING, COLLECTOR, &c. } Assumpsit.

Now come the plaintifft, by P. L. Shuman, esq., his attorney, and the defendant, by, the district attorney, and upon issue joined herein by agreement they waive the intervention of a jury, and for trial put themselves upon the court, and after hearing the evidence and the arguments of the counsel, the court takes the same under advisement.

Afterwards, to wit, on the first day of June, 1885, there was filed in said clerk's office the special finding of the court in said entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

CIRCUIT COURT OF THE U. S.
Northern district of Illinois:

S. YANADA
vs.
SPALDING, COL'R, &C.

The court finds the facts from the proofs in this case to be as follows: The goods in question are Japanese "curios" differing in character and entered for duty on the statement of their market value at cost in the country from which they were imported. An appraisement was made by the collector, from which appraisement plaintiff appealed to merchant appraisers.

The merchant appraisers appraised the goods and found the total value of the goods to amount to a sum which was less than ten per cent. above the entered value.

In arriving at their valuation the merchant appraisers decreased
11 the valuation of some of the goods below their value, as entered by the importer. The collector disregarded the finding of the merchant appraisers wherever they had lowered the value of any goods below the entered value, and restored the value of such goods to the entered value.

Taking, then, the entered value as the basis and accepting the merchant's appraisement only when it equaled or exceeded the entered value, the collector found that the appraised value of the goods exceeded their entered value by ten per cent., and accordingly assessed a penalty of 20 per cent. upon the appraised valuation of the goods.

H. W. BLODGETT,
Judge.

(Endorsed:) Filed June 1, 1885. Wm. H. Bradley, clerk.

12 On the same day, to wit, on the first day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in the said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

S. YANADA
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS, for the port and district of Chicago. } Assumpsit.

Now come the parties, by their attorneys, and the court, having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the plaintiff, and assesses his damages at three hundred and seventy-five dollars and twenty cents, with interest and costs. It is thereupon considered and adjudged by the court that the plaintiff do and have and recover of the defendant the said sum of three hundred and seventy-five dollars and twenty cents, his damages, with interest thereon, from the time said sum was paid to the defendant, together with his costs in this behalf expended, amounting to twenty-three dollars and forty-six cents, and that he have execution therefor.

13 Afterwards, to wit, on the fifteenth day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

S. YANADA
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS, for the port and district of Chicago. } Assumpsit.

Now comes the said defendant, by the district attorney, and on his motion it is certified by the court that there was probable cause for the acts done by said defendant as complained herein.

14 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the

proceedings had in said court in the cause wherein S. Yanada is the plaintiff, and Jesse Spalding, collector of customs for the port and district of Chicago, is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this nineteenth day of February, 1886.

[SEAL.] WM. H. BRADLEY,
Clerk.

15 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America, to the judges of the circuit court of the United States, for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between S. Yanada, plaintiff, and Jesse Spalding, collector of customs, &c., defendant in an action of assumpsit, a manifest error has happened, to the great damage of the said Jesse Spalding, collector of customs, &c., defendant, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 21st day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 110th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the U. S. Circuit Court Nor. Dist. of Illinois.

(Indorsed:) Supreme Court of the United States, Jesse Spalding, collector of customs, &c., plaintiff in error, vs. S. Yanada, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

16 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

To S. Yanada, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 18—, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern dis-

trict of Illinois, wherein Jesse Spalding is plaintiff in error, to show cause if any there be, why the errors mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. H. W. Blodgett, dist. judge presiding in circuit court this 18th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

H. W. BLODGETT,
Judge.

I hereby accept service of the within citation.

P. L. SHUMAN,
Plaintiff's Attorney.

CHICAGO, *March* 22, 1886.

17 (Indorsed:) 19022. Supreme Court of the United States, Jesse Spalding vs. S. Yanada. Citation to October term, A. D. 18—.

(Indorsement on cover:) No. 282. Jesse Spalding, collector of customs for the port and district of Chicago, plaintiff in error, vs. S. Yanada, N. Illinois, C. C. U. S. Filed June 8, 1886.

Office Supreme Court U. S.
FILED.
APR 20 1889
JAMES H. McKENNEY.
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE SPALDING, COLLECTOR OF CUSTOMS for the port and district of Chicago, plaintiff in error,
vs.
S. YANADA.
} No. 282.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE SPALDING, COLLECTOR OF CUSTOMS for the port and district of Chicago, plaintiff in error,
vs.
S. YANADA.
No. 282.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The plaintiff below imported Japanese "curios" of different characters. Appraisement was made, from which he appealed. Merchant appraisers were appointed, who found the total value of the goods to amount to a sum less than 10 per cent. above the entered value. The merchant appraisers valued some of the goods below their entered value. The collector adopted the valuation of the merchant appraisers where it was equal to or exceeded the entered value, but where it was below that fixed in

the invoices he adopted the invoice valuation. This raised the total value 10 per cent. above the invoice value. The collector assessed an additional duty of 20 per cent. on the appraised value. To recover this back, the importer brought suit. Trial by jury was waived. The court found the facts specially, and entered judgment against the collector thereon.

SPECIAL FINDING.

The court finds the facts from the proofs in this case to be as follows:

The goods in question are Japanese "curios," differing in character and entered for duty on the statement of their market value at cost in the country from which they were imported. An appraisement was made by the collector, from which appraisement plaintiff appealed to merchant appraisers.

The merchant appraisers appraised the goods and found the total value of the goods to amount to a sum which was less than 10 per cent. above the entered value.

In arriving at their valuation the merchant appraisers decreased the valuation of some of the goods below their value as entered by the importer. The collector disregarded the finding of the merchant appraisers wherever they had lowered the value of any goods below the entered value, and restored the value of such goods to the entered value. Taking, then, the entered value as the basis and accepting the merchants' appraisement only when it equaled or exceeded the entered value, the collector found that the appraised value of the goods exceeded their entered value by ten per cent., and accordingly assessed a penalty of 20 per cent. upon the appraised valuation of the goods. (Rec., pp. 5 and 6.)

JUDGMENT.

Now come the parties, by their attorneys, and the court, having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the plaintiff, and assesses his damages at three hundred and seventy-five dollars and twenty cents, with interest and costs. It is thereupon considered and adjudged by the court that the plaintiff do and have and recover of the defendant the said sum of three hundred and seventy-five dollars and twenty cents, his damages, with interest thereon from the time said sum was paid to the defendant, together with his costs in this behalf expended, amounting to twenty-three dollars and forty-six cents, and that he have execution therefor. (Rec., p. 6.)

SPECIFICATION OF ERROR.

The court erred in entering judgment on the special finding in favor of the plaintiff and against the defendant, in that the merchant appraisers had not the power to appraise any of the goods below their entered value.

BRIEF OF ARGUMENT.

Section 2930, Revised Statutes, provides:

If the importer, owner, agent, or consignee of any merchandise shall be dissatisfied with the appraisement, and shall have complied with the foregoing requisitions, he may forthwith give notice to the collector, in writing, of such dissatisfaction; on the receipt of which the collector shall select one discreet and experienced merchant to be associated with one of the general appraisers wherever practicable, or two discreet and experienced merchants, citizens of

tered at their invoice value, if it is found to be ten per cent. below the dutiable value, as well as those goods where the importer makes an addition to the invoice value.

The last clause of section 2900 declares:

> The duty shall not, however, be assessed upon an amount less than the invoice or entered value.

The appraisers in this case fixed the value of some goods at less than the invoice or entered value. They were prohibited by express law from making such a valuation. The entered value, we claim, runs through every section relating to the subject of valuation and assessment, and is a limitation on the collector, the appraisers, and the merchant appraisers, with the same effect as though it had been incorporated as a proviso in each of such sections. If incorporated into the last clause of section 2930 as a proviso, that section would read:

> "The appraisement thus determined shall be final, and be deemed to be the true value, and the duty shall be levied thereon accordingly," provided "the duty shall not, however, be assessed upon an amount less than the invoice or entered value."

If thus written, it would except out of the power of the merchant appraisers the right to appraise below the entered value. If the merchant appraisers had reduced every article appraised to less than its entered value, it would scarcely be a legitimate subject of dispute that they had exceeded their power, because the law says the duty shall not be assessed at less than that value. If they have such power over a part of the articles to so reduce the entered value, it would seem the same power would

apply to all, if they thought it right to exercise it on all, instead of a part. The entry is not to be considered for purposes of taxation as the result of an addition of the aggregate items contained in the invoice, in which some goods may be valued too high, and some too low, as may happen; but, on the contrary, it is the cost of the goods that is to be truthfully set forth in the invoice by the importer, and it is to be set forth at the actual cost price of purchase. This cost price of purchase of each article thus set forth is the entered value.

The language of the oath to be taken by an importer shows it is the actual values of the several articles distributively that are to be invoiced and taxed, and on which the valuation described in section 2900, Revised Statutes, is to operate. The oath provided for by section 2841, Revised Statutes, to be taken by the owner, is:

> I, ——— ———, do solemnly and truly swear (or affirm) that the entry now delivered by me to the collector of ———, contains a just and true account of all the goods, wares, and merchandise imported by or consigned to me, in the ———, whereof ——— ——— is master, from ———; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, of all charges thereon, including charges of purchasing, carriages, bleaching, dyeing, dressing, finishing, putting up and packing, and no other discount, drawback, or bounty, but such as has been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I do further solemnly and truly

> swear (or affirm) that I have not, in the said entry or invoice, concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if, at any time hereafter, I discover any error in the said invoice, or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

This oath contemplates that every article in an invoice is to be shown at its actual cost. The whole system of laws with reference to customs duties manifests that the value of each article is to be considered and estimated separately, and is to be invoiced in that way. Although more than one article may be included in an invoice, for the purposes of taxation, each distinct kind of article is dealt with separately. The "entered value" of section 2900, Revised Statutes, is the invoice or entered value of each different article, and not the aggregate of the added values of all the articles of different kinds that may be included in the same entry. The tax is not imposed on invoices; it is imposed on the goods or articles described in them. It is, therefore, the prices of the articles, which are not to be less than the invoice value at which the importer has stated them to be for entry. This statement, thus made under oath in the invoice, is conclusive as to him that they are not of a less value than he has fixed.

In Elmes on Customs, sec. 421, the principle is thus stated:

> The customs revenue system begins with the theory that the importer shall disclose the *article* and the

true market value, and thus bind himself by the invoice produced as concluding him from claiming any less than the value there expressed as the basis for estimating the ad valorem duty.

G. A. JENKS,
Solicitor-General.

22011——

○

APR 22 1899
JAMES H. MCKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 282.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

S. YANADA.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR THE DEFENDANT IN ERROR.

PERCY L. SHUMAN,
For Defendant in Error.

JUDD & DETWEILER, PRINTERS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 282.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

S. YANADA.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR THE DEFENDANT IN ERROR.

BRIEF OF ARGUMENT.

The only question in this case is as to the proper construction to be put upon the final clause of section 2930, Revised Statutes of the United States.

This case was tried in the circuit court by Blodgett, J., without a jury, a jury having been waived, and the court rendered a special finding (Rec., p. 5), and upon the issues

and facts as found, specially and generally, judgment was rendered in favor of the plaintiff in the court below.

The language of the court in construing the section of the law referred to is as follows:

"The only question in the case is whether the importer is bound by his own entry value of each item in his invoice or whether, when he calls for merchant appraisers, they are to examine the goods and put their valuation upon them without regard to the entry value. Section 2930, by its last clause, declares that the appraisal—that is, the appraisement of the merchant appraisers—thus determined 'shall be final and be deemed to be the true value, *and the duties shall be levied thereon accordingly.*' I cannot put any other construction upon this language than that merchant appraisers are given plenary discretion to value all the goods in the invoice, and that their valuation is to be binding and the guide by which the duties are to be assessed. It seems to me that when the importer is dissatisfied with the appraisal put upon the goods by the collector and calls for merchant appraisers this tribunal acts without regard to the entry value for the purpose of assessing the duties, and that the importer is not bound to pay duties on any article in the invoice at the entered value when the [merchant] appraisers report a less value." (XXIV Fed. Rep., 22.)

Section 2900, Revised Statutes, provides that at the time when the importer makes his entry he may make such addition in the entry to the cost or value given in the invoice as in his opinion may raise the same to the actual value, and the collector may cause such actual value to be appraised; "and if such appraised value shall exceed by ten per centum or more the value so declared in the entry, then, in addition to the duties imposed by law on the same, there shall

be collected a duty of twenty per centum ad valorem on such appraised value. The duty shall not, however, be assessed upon an amount less than the invoice or entered value."

It was under this section and provision of law that the collector assessed the additional duty complained of in this case.

Upon being advised of the collector's action the defendant in error availed himself of the provisions of section 2930, Revised Statutes, permitting an appeal to a board of merchant appraisers, with the result set forth in the special finding, as follows:

"In arriving at their valuation the merchant appraisers decreased the valuation of some of the goods below their value as entered by the importer."

Their total value, as found by the merchant appraisers, was less than ten per cent. above the entered value.

We rely upon the construction given to the last clause of section 2930 by the learned circuit judge.

It would seem to be within the power of Congress to constitute the board of merchant appraisers and to give them the plenary discretion to ascertain the true value of merchandise submitted to them for appraisement.

The two sections of the statutes governing the appraisement of merchandise may be read together, and their provisions carried out to the fullest intent determinable from their language, and without conflict. The one section is in no sense dependent upon the provisions of the other. The duties of the official appraiser are defined in section 2900, and in section 2930 an entirely different tribunal